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November 16, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554


Re: MM Docket No. 01-269
RM-10249
Antlers, Oklahoma

Dear Ms. Salas:

On behalf of KTCY Licensing, Inc., we are filing an original and four (4) copies of "Comments and Counterproposal" in the above-referenced rulemaking proceedings.

If you have any questions, please don't hesitate to contact the undersigned counsel.

Very truly yours,



Allan G. Moskowitz

AGM/lis

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-269
Table of Allotments)	RM-10249
FM Broadcast Stations)	
(Antlers, Oklahoma))	

TO: Chief, Allocations Branch

COMMENTS AND COUNTERPROPOSAL

KTCY Licensing, Inc. ("KTCY"), by its attorney, hereby submits its Comments and Counterproposal in response to the Notice of Proposed Rulemaking, ("NPRM"), DA 01-2263, released September 28, 2001 in the above-referenced Docket. In support thereof, the following is respectfully shown:

1. The Commission's September 28, 2001 NPRM, adopted in response to a Petition for Rulemaking filed by Charles Crawford, proposed to modify the Table of Allotments by adding Channel 284A at Antlers, Oklahoma as potentially the community's third FM service.

2. KTCY is the licensee of Radio Station KTCY(FM), Pilot Point, Texas operating on Channel 285C1. KTCY herein counterproposes that Channel 285C0 be added at Pilot Point, Texas and that Radio Station KTCY(FM)'s license be modified accordingly. Additionally, KTCY also counterproposes the

addition of a third local service in Antlers, Oklahoma as Channel 227A in lieu of Channel 284A as proposed by Crawford.

3. The proposed channel change in Antlers would accommodate the arrangement of allotments preferred by KTCY and originally specified by it in a timely counterproposal filed in MM Docket No. 01-209, RM-10224 (Broken Bow, Oklahoma). As indicated in that counterproposal, and in the attached engineering statement of William J. Getz of Carl T. Jones Corporation, changes are necessary in two other allocation proceedings to accommodate the channel changes requested in the instant counterproposal. In MM Docket 01-209, Maurice Salsa requested modification of the Table of Allotments by adding Channel 285A at Broken Bow, Oklahoma as that community's third aural service which would conflict with KTCY's instant counterproposal that Channel 285 be upgraded from Class C1 to C0 at Pilot Point, Texas. KTCY identified an alternative channel for use at Broken Bow which would preserve the requested third local service and would be compatible with the instant counterproposal. Consequently, KTCY submitted a counterproposal in MM Docket 01-209 timely proposing Channel 265A be added in lieu of Channel 285A at Broken Bow, Oklahoma.

4. Similarly, in MM Docket No. 01-255, the Commission has issued an NPRM proposing, also at the request of Maurice Salsa, that Channel 226A be added at Wright City, Oklahoma. However, because Salsa's Channel 226A allotment site for Wright City is less than that specified in Section 73.207 of the Commission's

Rules for first adjacent Class A to Class A Channels, Salsa's proposed site is in conflict with the instant proposal of Channel 227A at Antlers, Oklahoma. KTCY has identified an alternate allotment reference site which would allow use of proposed Channel 226A at Wright City and would preserve the requested first local service and be compatible with the proposed channel change at Antlers. Consequently, KTCY will be simultaneously filing a counterproposal in MM Docket No. 01-255.¹

Public Interest Benefit

5. KTCY's proposed allotment scheme would serve the public interest and the Commission's allotment priorities by expanding existing service at Pilot Point, Texas by Radio Station KTCY(FM) and by satisfying Maurice Salsa's requests for a first service at Wright City, Oklahoma and third service at Broken Bow, Oklahoma and the request of Charles Crawford for a third service at Antlers, Oklahoma.

6. Radio Station KTCY(FM) is licensed to operate on Channel 285C1 at Pilot Point, Texas and its primary service contour encompasses an area of 16,286 square kilometers containing a population of 1,473,827 persons. As reflected in the attached engineering statement, the proposed Class C0 83 kilometer radius circle encompasses an area of 21,642 square

¹ KTCY does not oppose the alternate proposal of Radio One Licenses, Inc. that Channel 286A be allotted to Wright City, Oklahoma which proposal was submitted in MM Docket No. 01-216 (Valliant, Oklahoma) and MM Docket No. 01-209 (Broken Bow, Oklahoma), in that it is compatible with KTCY's proposed allocation scheme.

kilometers and a population of 1,874,662 persons constituting an increase of nearly of 5,000 square kilometers of area and 400,000 persons, a 32 percent in area and 27 percent increase in population.

7. In revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), the Commission set forth the four FM assignment priorities. Since neither KTCY nor Crawford's proposal proposes a first or second full time aural service nor a first local service, KTCY's proposal to expand its coverage area by upgrading Channel 285 would constitute priority number 4, "Other Public Interest Matters". See, Greenup, Kentucky 4 FCC Rcd. 3843 (1989). Furthermore, FM channels of the same class are presumed to be equivalent for allotment proposes. See Churubusco, Huntington, Roanoke and South Whitley, Indiana, 4 FCC Rcd. 5045 (Pol. and Rules Div.) (1989), aff'd. 5 FCC Rcd 916 (1990). Consequently, Channel 227A must be presumed to be "as good as" Channel 284A for allocation at Antlers, Oklahoma. Therefore, KTCY's counterproposal must be preferred in light of its additional public interest benefit, i.e., the upgrade of Channel 285 at Pilot Point and its resultant expanded service by Radio Station KTCY(FM).

Gain and Loss Study

8. As indicated in the attached Engineering Statement and in Exhibit 1 to the Engineering Statement, a substantial 5,575 square kilometer gain area is created by the instant proposal while a 251 square kilometer loss area is created for a net

primary service gain area of 5,324 square kilometers.

Furthermore, the entire loss area will continue to be served by five or more aural services. Similarly, the KTCY(FM) gain area contains a population of 392,657 persons and the loss area contains merely 8,184 persons. Consequently the upgrade of Channel 285 from Class C1 to Class C0 at Pilot Point, Texas will result in a net population gain of 384,467 persons within the KTCY(FM) primary service area.

9. KTCY Licensing, Inc. submits that should the Commission grant the instant counterproposal to, inter alia, substitute Channel 285C0 for Channel 285C1 at Pilot Point, Texas and modify Radio Station KTCY(FM)'s license accordingly, KTCY Licensing, Inc. will file an application for the new facilities and, when granted, will implement that application expeditiously.

10. In conclusion, the Commission should prefer the instant counterproposal to Crawford's original proposal. First, it satisfies Crawford's request for a third local service at Antlers, Oklahoma, albeit on a different, but equal, channel. Additionally, Radio Station KTCY(FM) will be able to upgrade its service to its listening public from Class C1 to Class C0 and will provide a net population gain of 384,467 persons within the station's primary service area. KTCY Licensing, Inc. submits that its counterproposal should therefore be adopted.


WHEREFORE, for the foregoing reasons, KTCY Licensing, Inc. respectfully requests that the Commission amend its Table of Allotments to substitute Channel 285C0 for Channel 285C1 at Pilot

Point, Texas; add Channel 265A at Broken Bow, Oklahoma; add Channel 227A at Antlers, Oklahoma; add Channel 226A at Wright City, Oklahoma and modify the license of Radio Station KTCY(FM) accordingly.

Respectfully submitted,

KTCY LICENSING, INC.

BY:


Allan G. Moskowitz
Its Attorney

KAYE SCHOLER LLP
901 Fifteenth Street, N.W.
Suite 1100
Washington, D.D. 20005
(202) 682-3500

Dated: November 16, 2001



**STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF
COMMENTS AND COUNTERPROPOSAL
IN MM DOCKET NO. 01-269, RM-10249**

Petitioner: KTCY Licensing, Inc.

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by KTCY Licensing, Inc. ("KTCY Licensing"), licensee of KTCY(FM), Pilot Point, Texas, to prepare this statement and the attached exhibit in support of a counterproposal and Comments in MM Docket No. 01-269. On September 19, 2001, the Allocations Branch adopted a *Notice of Proposed Rulemaking* ("NPRM") in response to a Petition for Rulemaking filed by Charles Crawford ("lead petitioner"). The NPRM set forth the lead petitioner's request to modify Section 73.202(b) of the FCC Rules by adding Channel 284A at Antlers, Oklahoma, and established a Comment date of November 19, 2001. This counterproposal requests channel 227A in lieu of the lead petitioner's proposed channel 284A at Antlers, Oklahoma. The proposed channel change at Antlers would accommodate the KTCY Licensing preferred arrangement of allotments specified below which was originally introduced as a timely counterproposal in MM Docket No. 01-209, RM-10224.

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	<u>Present</u>	<u>Proposed</u>
Pilot Point, TX	285C1	285C0
Broken Bow, OK	227C3, 244A, 285A*	227C3, 244C3, 265A
Antlers, OK	222C2, 272A, 284A**	222C2, 272A, 227A
Wright City, OK	226A***	226A

- * Channel proposed in MM Docket No. 01-209, Comments filed 10/22/01
- ** Channel proposed in MM Docket No. 01-269
- *** Channel proposed in MM Docket No. 01-255

Channel 227A at Antlers, Oklahoma, in lieu of Channel 284A

In MM Docket No. 01-269, the FCC's NPRM sets forth Charles Crawford's ("Crawford") request to modify Section 73.202(b) of the FCC Rules by adding Channel 284A at Antlers, Oklahoma. Crawford's Channel 284A allotment reference site is separated from the KTCY(FM), Channel 285C0 allotment reference site (see below) by 134.6 km. Because this distance is less than the required 152 kilometer, first-adjacent channel, Class C0 to Class A, minimum distance separation specified in Section 73.207 of the FCC Rules, KTCY's proposed use of Channel 285C0 is in conflict with the Crawford's proposal. Therefore, the KTCY Licensing proposal is considered a counterproposal in MM Docket 01-269.

KTCY Licensing has identified an alternate channel for use at Antlers which would preserve the requested third local service and would be compatible with the KTCY Licensing proposed arrangement of allotments. It is submitted that Channel 227A may be

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added in lieu of channel 284A at Antlers, Oklahoma. The allocation reference coordinates for Channel 227A are **34° 17' 01" N.L. and 95° 41' 48" W.L.** The alternate Antlers allotment reference site meets the allotment standards, the minimum spacing requirements of §73.207 and the city-grade coverage requirements of §73.315 of the FCC Rules.

The other changes not involved in MM Docket 01-269

KTCY(FM), Pilot Point, TX, Channel 285C1 to Channel 285C0

The proposed arrangement of allotments will allow KTCY(FM) to increase to a fully-spaced maximum Class C0 facility (100 kW ERP @ 450 m HAAT). An engineering study of all pertinent allotments, assignments and applications revealed that Channel 285C0 can be allotted to Pilot Point, with a site restriction of 28.5 kilometers northeast. The allotment reference coordinates for Channel 285C0 at Pilot Point, Texas, are **33° 37' 37" N.L. and 96° 49' 32" W.L.** The Pilot Point allotment reference site meets allotment standards, the minimum spacing requirements of §73.207 and the city-grade coverage requirements of §73.315 of the FCC Rules.

Exhibit 1 shows the 72 km radius circle (based on uniform terrain and the maximum Class C1 60 dBu contour distance) from the KTCY(FM) licensed, Class C1 transmitter site. The present Class C1 circle encompasses an area of 16,286 km² and, according to the 2000 U.S. Census of population, contains a population of 1,473,827 persons.

Also shown on Exhibit 1 is the 83 km radius circle (based on uniform terrain and the maximum Class C0 60 dBu contour distance) from the proposed Class C0 allocation

reference site. The proposed Class C0 circle encompasses an area of 21,642 km² and, according to the 2000 U.S. Census of population, contains a population of 1,874,662 persons.

As shown on the Exhibit, a substantial 5,575 km² gain area is created by the instant proposal while a 251 km² loss area is created for a net primary service gain area of 5,324 km². The entire loss area will continue to be served by five or more aural services.

The KTCY(FM) gain area contains a population of 392,657 persons and the KTCY(FM) loss area contains a population of 8,184 persons. As a result, the proposed arrangement of allotments will result in a net population gain of 384,467 persons within the KTCY(FM), primary service circle.

Channel 265A at Broken Bow, Oklahoma, in lieu of Channel 285A

In MM Docket No. 01-209, the FCC's NPRM sets forth Maurice Salsa's ("Salsa") request to modify Section 73.202(b) of the FCC Rules by adding Channel 285A at Broken Bow, Oklahoma. The Salsa Channel 285A allotment reference site is separated from the KTCY(FM), Channel 285C0 allotment reference site by 197.2 km. Because this distance is less than the required 215 kilometer, cochannel, Class C0 to Class A, minimum distance separation specified in Section 73.207 of the FCC Rules, KTCY's proposed use of Channel 285C0 is in conflict with the Salsa's proposal. Therefore, the original KTCY Licensing proposal was filed as a timely counterproposal in MM Docket 01-209.

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KTCY Licensing has identified an alternate channel for use at Broken Bow which would preserve the requested third local service and would be compatible with the KTCY Licensing proposed arrangement of allotments. It is submitted that Channel 265A may be added in lieu of channel 285A at Broken Bow, Oklahoma. The allocation reference coordinates for Channel 265A are 34° 04' 41" N.L. and 94° 45' 53" W.L. The alternate Broken Bow allotment reference site meets the allotment standards, the minimum spacing requirements of §73.207 and the city-grade coverage requirements of §73.315 of the FCC Rules.

Change in allotment reference site for Channel 226A at Wright City, Oklahoma

In MM Docket No. 01-255, the FCC's NPRM sets forth Maurice Salsa's ("Salsa") request to modify Section 73.202(b) of the FCC Rules by adding Channel 226A at Wright City, Oklahoma. Salsa's Channel 226A allotment reference site is separated from the proposed Antlers, Channel 227A allotment reference site (as described herein) by 69.5 km. Because this distance is less than the required 72 kilometer, first-adjacent channel, Class A to Class A, minimum distance separation specified in Section 73.207 of the FCC Rules, Salsa's proposed site for Channel 226A at Wright City is in conflict with the proposed Channel 227A at Antlers. Therefore, this proposed arrangement of allotments is also considered a counterproposal in MM Docket 01-255.

KTCY Licensing has identified an alternate allotment reference site which would allow use of the proposed channel 226A at Wright City and would preserve the requested first

STATEMENT OF WILLIAM J. GETZ
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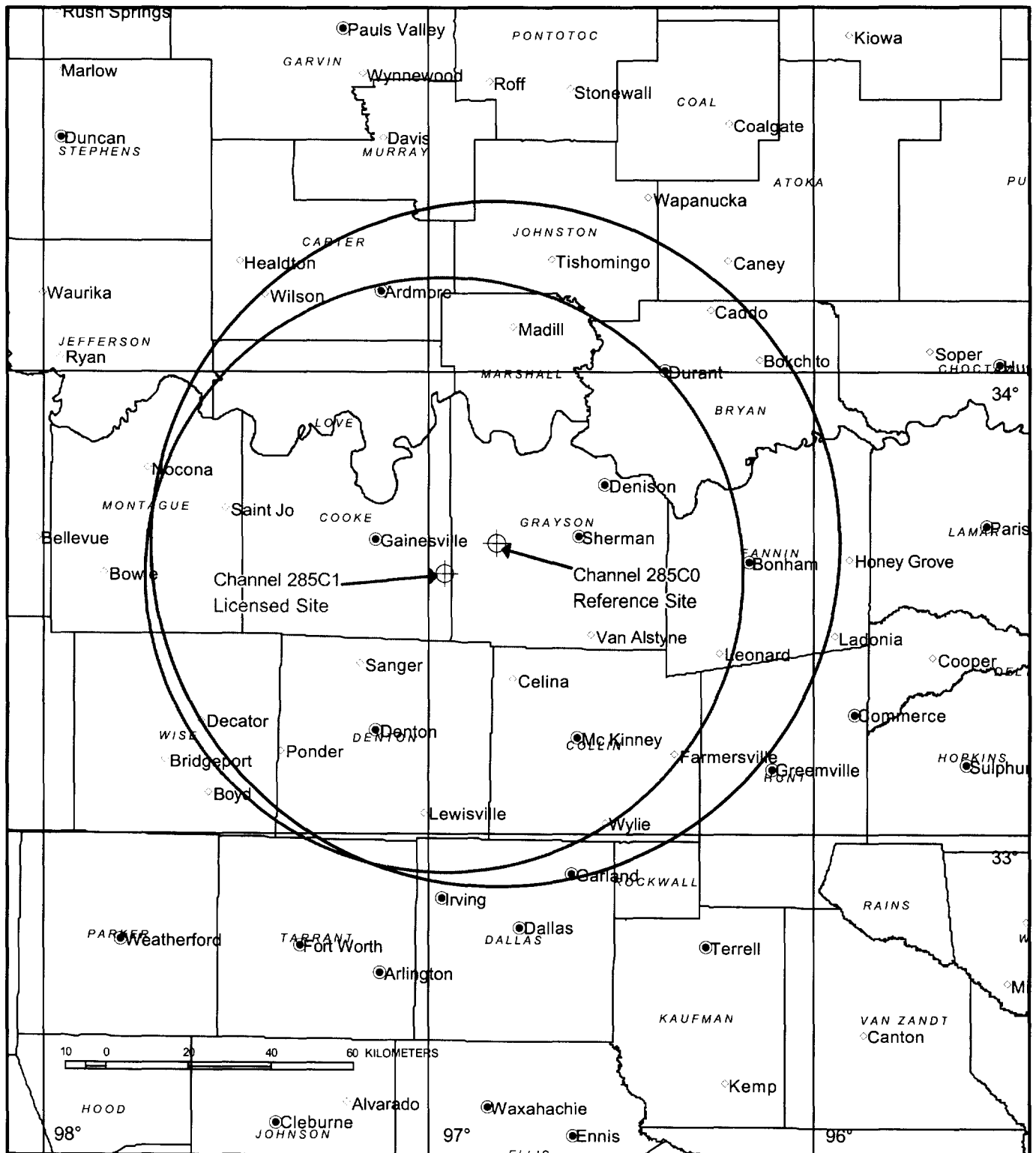
local service. The proposed Wright City allotment reference site would be compatible with the proposed channel change at Antlers. It is requested herein to modify the allocation reference coordinates for Channel 226A at Wright City to 34° 05' 10" N.L. and 94° 56' 57" W.L. The alternate Wright City allotment reference site meets the allotment standards, the minimum spacing requirements of §73.207 and the city-grade coverage requirements of §73.315 of the FCC Rules.

KTCY Licensing will simultaneously file this material as comments in the Wright City proceeding which has the same comment date as the current proceeding. This statement and the supporting exhibit were prepared by me or under my direct supervision and are believed to be true and correct.

DATED: November 14, 2001


William J. Getz

Channel 285C1 Reference Site: 33-33-37 N.L. and 96-57-34 W.L.
 Channel 285C0 Reference Site: 33-37-37 N.L. and 96-49-32 W.L.



CHANNEL 285 60 DBU GAIN AND LOSS AREAS
 CHANNEL 285C1: RED 72 KM RADIUS CIRCLE
 CHANNEL 285C0: BLUE 83 KM RADIUS CIRCLE
 OCTOBER, 2001

CERTIFICATE OF SERVICE

I, Laura P. Sinner, Secretary at the law firm of Kaye Scholer LLP, hereby certifies that a copy of the foregoing "Comments and Counterproposal" was delivered by hand, this 16th day of November, 2001 to the following:

Sharon P. McDonald
Federal Communications Commission
445 - 12th Street, SW
Room 3-A226
Washington, DC 20554

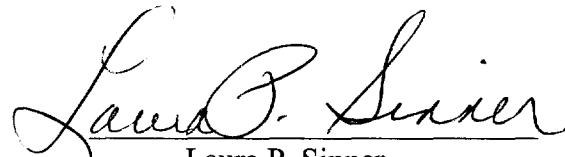
and was mailed by first-class mail, postage prepaid to the following:

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